

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

MARA FLAMM,

Plaintiff,

v.

SARNER & ASSOCIATES, P.C. et al.

Defendants.

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CIVIL ACTION

NO. 02-4302

**REPLY MEMORANDUM IN SUPPORT OF MOTION OF
ATTORNEY DEFENDANTS TO DISMISS PLAINTIFF’S COMPLAINT**

In opposing the motion to dismiss of defendants, Sarner & Associates, P.C.; Joshua Sarner, Esquire; and Leonard Sarner, Esquire (collectively “attorney defendants”), plaintiff Mara Flamm has admitted, if grudgingly, that an attorney who retains a process server to serve legal process is not subject to the federal Fair Debt Collection Practices Act (“FDCPA”):

In this case, if Defendants were merely serving or attempting to serve legal process upon Plaintiff, i.e. Defendants served or attempted to serve legal process at Peirce College and then departed without comment, the argument of Defendants may merit consideration.

See Plaintiff’s Memorandum of Law in Opposition to Defendants [Attorney Defendants] Motion to Dismiss at IV. B.

This admission alone warrants the dismissal of Count I of the Complaint. Plaintiff nowhere rebuts the attorney defendants’ argument that they are not, by definition, debt collectors under the Act. See 15 U.S.C. § 1692a(6)(D). Rather, plaintiff merely identifies the various causes of action that she would have if the Act were definitionally applicable. See Plaintiff’s

Memorandum at IV. B. 1.-7. Accordingly, Count I of the Complaint should be dismissed with prejudice, and the remaining counts dismissed without prejudice.

CHRISTIE, PABARUE, MORTENSEN and YOUNG
A Professional Corporation

By:

JAMES W. CHRISTIE, ESQUIRE (I.D. No. 12068)
WILLIAM F. MCDEVITT, ESQUIRE (I.D. No.: 80206)
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Attorneys for Defendants,
Sarner & Associates, P.C.;
Joshua Sarner, Esquire and
Leonard Sarner, Esquire

Dated: August 28, 2002

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CIVIL ACTION

NO. 02-4302

**MOTION FOR LEAVE TO FILE REPLY MEMORANDUM IN SUPPORT
OF ATTORNEY DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO RULES 12(b)(1) AND 12(b)(6)**

Defendants, Sarner & Associates, P.C.; Joshua Sarner, Esquire; and Leonard Sarner, Esquire (collectively "attorney defendants"), respectfully request leave of this Court to submit the attached Reply Memorandum in Support of their Motion to Dismiss the Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

CHRISTIE, PABARUE, MORTENSEN and YOUNG
A Professional Corporation

By:

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Attorneys for Defendants, Sarner & Associates, P.C.;
Joshua Sarner, Esquire and Leonard Sarner, Esquire
("Attorney Defendants")

Dated: August 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion For Leave to File Reply Brief in Support of attorney defendants' Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(B)(6) and Rule 12(B)(1) and Reply Brief of Sarner & Associates, P.C., Joshua Sarner, Esquire and Leonard Sarner, Esquire, were served today via first class mail to all counsel of record at the addresses listed below:

Robert P. Brand, Esquire
1200 Walnut Street, 5th Floor
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Anthony Baratta, Esquire
Baratta & Russell, P.C.
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JAMES W. CHRISTIE

Dated: August 28, 2002